LEGAL and other REASONS

(*With all Humility*)

Presented to His most Excellent Majesty,

King Charles II.

AND TO

Both His Honorable Houses

OF

PARLIAMENT,

WHY THE

SUBJECTS of *ENGLAND*,

Should not be IMPRISONED for

Debt or Damages,

Or any thing thereunto relating.

BY

William Cole of *Grays-Inn* in the County of *Middlesex*, Esq;

London: Printed in the year 1680.

This Letter was preſented to His Majeſty, and the two following Letters to his Royal Highneſs the Duke of *York*, and to the Honorable the then Speaker of the Houſe of Commons, with the Book incloſed in each of them, the day of the Date here under-written by a Friend of Mr. *Cole*, he then being a Priſoner in the *Kings-Bench* Priſon.

May it pleaſe your moſt Sacred Majeſty,

I *Moſt humbly beſeech your Majeſties mercy, to this very great confidence, that I ſhould entertain a thought, to direct (the incloſed Printed paper) to find out this new and unknown way, this North-Weſt-Paſſage, to bring it to the Indies of your Majeſties gracious hands; but* Euſebius *tells mee, that Great and Wiſe Monarchs, do not only view, but ſharply pierce, all good intentions, and are like the Sun, which beſtows the noble and generous equality of its glorious and vertual excellency, not only on the lofty Cedar, but the low and humble Plant. The half-hours reading (on which this ſhort Tract (with all humility) begs your Majeſty will beſtow your Princely Eyes) will (in part thereof) ſhew ſomthing of the Picture of that Rich, Ineſtimable, and Seraphick mind, that dwelt in your now Glorified Royal Father, whoſe affectionate Princely care of His Subjects, ſent its beams into all the Priſons of* England, *to viſit and ſhine upon them there, who, I (with all ſubmiſſion) crave leave to think, are very fit objects, for your Majeſties gracious deliberate thoughts, many of which (like my ſelf) having (even from the time of the firſt ſetting up of his late Majeſties Standard Royal at* Nottingham) *faithfully ſerved him in that juſt and glorious cauſe, and (not unlike my ſelf too) have totally been ruined by the late Civil War, and fatal Fire. But I infinitely forget my ſelf, and am obliged to wiſh that my voyce were like that of* Mars *in* Homer, *which (from hence) might audibly reach your Majeſties gracious Ear, without the greater trouble of your Eye, or that my confinement here were not ſo ſevere, but that I might bring my body to lay it down at your Majeſties Royal feet, together with all the Duty, Loyalty and Obedience of*

From His Majeſties Priſon of the *Kings-Bench* in *Surrey, Octob.* 16. 1675.

Your Majeſties moſt humble, and truly Devoted, Loyal and Faithful Subject,

William Cole.

May it pleaſe your Royal Highneſs,

THE moſt valuable Treaſure in the Exchequer of Nature, is Life, the next is Liberty, which is the ſubject (the incloſed little Treatiſe) moſt humbly preſents and recommends unto your Highneſſes retired thoughts. I am right willing to believe that the Antient Laws of England, *and the Authority of Hiſtory (both which your Royal Highneſs will find this ſhort Diſcourſe (in ſome meaſure furniſht with) will give (your Highneſſes keen and ſharp parts) cauſe to prevail with your ſelf, to give it a peruſal. But that which is beyond, and above all Arguments is, the Heroick pattern which your Highneſſes Royal Father of eternal Memory (now with Angels) is therein truly aſſerted to have left of his gracious Clemency and Mercy to his Subjects, which (is more than hoped) will win (your Highneſſes known propenſion to acts ſo eminently good) to be the Royal Prolocutor for very many Knights, Eſquires, Gentlemen, and Merchants (now in durance) who (with my ſelf) by the late Civil War, and dreadful Fire) are brought to Line a Priſon, and ſo in no capacity perſonally to convey to your Royal Highneſſes Ear, the preſſures they are under. And if this breach (thus made upon your Highneſſes patience) be a ſin any way pardonable, it is moſt humbly ſought for, begged and implored by*

From His Majeſties Priſon of the *Kings-Bench*, in *Surrey*, *Octob.* 16. 1675.

Your Royal Highneſſes moſt humbly
and ſteadily Devoted, in all
Duty and Obedience

William Cole.

Mr. Speaker,

TAcitus *acquaints me, that patience and equanimity of mind doth ſweetly calm and ſmooth the ſwelling and impetuous Waves, which accompanies rough and boyſterous Adverſity, and Sir* Walter Rawleighs *Hiſtory of the World informs me, that croſſes are* (tributa vivendi) *a kind of tribute, or tax we pay for being alive, which* (*as he Phraſes it*) *like* Myrrh, *and* Salt, *ſeaſons and keeps men ſweet. The troubles* (*which the heat of the late fatal fire*) *budded, bloſſomed, and ripened for me* (*wherein I loſt ſeven hundred pounds a year* (*all inheritance*) *hath given me leaſure here, to run down ſome of my time in Compoſing the ſhort Treatiſe, which now* (*by the hands of the truly worthy Gentleman that preſents it to you*) *ſalutes yours. Sir, in it you will find ſomthing of the Antient Laws of* England, *which* (*I crave your favour to believe*) *may invite* (*your well underſtood inclinations to affairs of this publick utility*) *to promote the great and good work which* (*theſe two Printed ſheets of paper*) *aim at, wherein you will* (*not only effectually ſerve His Majeſty and your Country*) *but manumit very many perſons of generous Education, Worth and Eſteem, who have deeply ſuffered in and for their endeavours for the maintainance of His Majeſty and His Royal Fathers juſt Right, and Authority; which Sir, they all* (*and great numbers of others, which the late Wars, and Fire have ſunk* (*by my hands*) *do very humbly recommend to your prudent care and kindneſs, and cannot doubt, but that Body of yours which is in-layd with a Soul ſo full of Eminent, Signal and Rich endowments*) *will give it ſelf ſo much of trouble as may conſummate theirs and my very Conſciencious and Juſt deſires. And if you ſhall pleaſe to add me to the number, and reckon me amongſt thoſe that have a true honor and ſervice for you* (*although not ſo happy as to be known to you*) *it will be a moſt acceptable favor and regard vouchſafed unto*

Sir, Your very humble
and faithful ſervant

William Cole.

From His Majeſties Priſon of the *Kings-Bench, Octob.* 16. 1675.

Legal and other Reaſons, (with all humility) preſented to His Moſt Excellent Majeſty, King Charles *the Second, and to both His Honorable Houſes of Parliament, why the Subjects of* England, *ſhould not be Impriſoned for Debt or Damages, or any thing thereunto relating.*

IT is evidently and undeniably plain, that (by the Ancient Common Law of the Land) the Bodies of any of the people of *England*, could not, at the Sute of any Subject, be Arreſted, Impriſonned, or any of them Outlawed, for Debt or Damages, (or any thing thereunto relating) as clearly appears, not only by our Antient Laws, but by the Authority of theſe two great Sages of the Law, the Lord Chief Juſtice *Coke*, in his Third Report, *fol.* 11 & 12. and the Lord *Dyer*, *An.* 23 *Eliz.* 305. *b.* the which alſo by *Magna Charta*, *Chap.* 29. (that great Expoſitor of our Antient Laws) was (in affirmation of the Antient Common Law (with great and ~~many~~ warry circumſpection) provided againſt, and not only (not as much as thought on before the Conqueſt) but was abhorred (in the leaſt) to be practiſed, from that time, and the time of the birth of that explanatory Law, (which was in the Ninth year of the Reign of King *Henry* the Third) until many Ages after, there being variety of great, weighty, and pregnant Reaſons, for the preſervation of that greateſt Liberty, and Priviledge of the Subject (the freedome of their Perſons from Impriſonment) and as well thoſe Antient Laws before the Conqueſt, as the Laws until the making of the great Charter, (and threeſcore years after) were, in that particular, (with all ſtudious and ſedulous care) inviolably obſerved, as an eminent and ſignal Badge of the immunitie and heroick freedome of the Engliſh Nation, who were then deſervedly called (*libera gens*) and lived ſo, (and in ſo great an happy Splendor, (to the envious admiration of the reſt of

the Christian World, (and to the eternal honor of our Ancestors) without being subject to any such Imprisonment, not only all the time of *William* the Conquerors Reign, (which was above Twenty years) but one hundred fourscore and forteen years after his death, and until the Statute of *Westminster* the second, Chapter the 11. (made in the Thirteenth year of King *Edward* the First, invented a *Capias*, and a new Process of Outlawry, (which from that time) was full so many years, the Statute of the two and fiftieth of *Henry* the Third, *Chap.* 23. (although the first that ever made any English (Mans person subject to such Arrest) yet it being only against Baylifs of particular Lords) I lay no great stress on, but that breach and inroad being once made into, and upon the Common Law, (by the Statute of *Westminster* the Second) gave encouragement, to the unhappy production of another Statute, made in the twenty fifth year of the Reign of King *Edward* the Third, *Chap.* 17. by which it was Enacted, that such Process should be made in Debt, and detinue of Chattels, and by process of Exigent, as was then used in in Writs of Accompt; which were two such keen Laws, that they not only Invaded, but cut in sunder, the choyceſt Liberty of the Subject, by submitting the persons of the then free people of *England*, to the cruelty of Imprisonment for Debt and Damages; but the same wise King *Edward* the Third, of whom the Lord Chief Justice *Coke*, (in the second part of his Institutes, *fol.* 29) gives this Character, That King *Henry* the Second, *Edward* the First, and *Edward* the Third, were (all of them) Princes of great Fortitude, Wisdome, and Justice, that governed by their Laws, but that (in the Reign of King *Edward* the Third) the Laws did principally flourish, who (saith he) was a Noble, Wise, and Warlick Prince. This prudent Prince (I say) looking deliberately into the Wounds those Statutes had given, to the honor and happiness of the Kingdom, and to that ancient and most venerable part of the Common Law, (which preserved his Subjects persons from Imprisonment) and the very many Kings Reigns and Ages, (without any the least interruption) which that glorious, and famous Liberty, had prosperously continued, and (as it were) repenting of the making of the said bitter Statute, of the twenty fifth year of his own Raign, and he and his Parliament, finding the mischievous inconveniences and dishonor, that it had put upon the people, and resolving, to file those Shakles, from off the Subjects feet, and to reinvest them into the Liberty and freedome of their persons, from imprisonment, according to the common Law of the Land, by that gracious healing Statute, made in the two and fortieth year

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of the Reign of the ſame King *Edward* the Third, *Chap.* 1. thoſe two Raizor metled, cutting rigorous Laws were (as to ſuch Impriſonment as aforeſaid) by the opinion of many, and by the general conſtruction of Law, and the true intendment hereof) Repealed, which declared, that the Great Charter ſhould be holden, and kept in all points; and (if any Statute be made to the contrary) that it ſhould be holden for none, which ſaid laſt mentioned Statute, was (acording to common conſtruction) intended fully to reſtore the brightneſs and luſter, of the ancient Common Law, and to ſupport and maintain the ſtrength and vigor of that Standard, of Law and Juſtice (the Great Charter) which not only aſſerts His Majeſties juſt Rights and Prerogative Royal, but defends and preſerves the Freedom and juſt Liberties of the people, which (as the ſame Author in his Preface to his ſecond Inſtitute) tells us, hath been confirmed, by two and thirty Acts of Parliament, and not only ſo, but (by the Statute of the twenty fifth of *Edward* the Firſt) the ſame is to be taken, as the Common Law. But the ſeting up, and creation of the great numbers of Offices and Officers, and the herds of perſons, which thoſe moſt ſevere Laws *Weſtminſter* the Second, and the Statute of the twenty fifth of *Edward* the Third) had moſt advantageouſly preferred, almoſt in every City, Town, and Village of the Kingdome, had ſo fix'd, faſtned, and rivited ſuch Multitudes of perſons (many of them of very great and eminent quality and intereſt) in places of great and tempting gain, which had made ſo deep an impreſſion, upon the minds of that prevalent and powerful part of the Kingdome, (who had thereby plentifully enricht themſelves) that notwithſtanding the ſaid Statute, of the two and foroftieth *Edw.* the Third, ſo intentionally compoſed as aforeſaid, for the manumitting of the people of *England*, (as well from the thraldome of a Priſon, as otherwiſe to preſerve their Liberty) they went on to Impriſon the Bodies of the Subject, which hath ever ſince been practiſed; not only (by vertue of thoſe two Laws, *Weſtminſter* the Second, and the twenty fifth of *Edward* the Third) but that of *Acton Burnell*, and the Statute *de mercatoribus*, touching Arreſts upon Statutes, Staple, and Merchant, and all other Laws built upon them, which (contrary to the antient Common Law, (as is very plain) doth continue the invaſſilation of Impriſonment againſt, and upon, all the free born Subjects of *England*, except the Lords, and they themſelves (in ſome caſe) as the Law by ſome is holden to be) are not exempted neither: for if a Nobleman be Outlawed (as it is holden) he may be arreſted and Impriſoned, and (until the Outlawry be reverſt, is not only incapable to ſit in the Ho

of Peers, but all his perſonal Eſtate is forfeited, and his Lands in the ſame condition, with any other Subject. So that it is indiſputably clear, how great an Intrenchment the Impriſonment of Mens perſons, is, upon the honor of the antient Common Law, of which, as the Lord Chief Juſtice *Coke* ſaith, the Great Charter, is but declaratory, and as a late Writer, (from good authority) tells us, did not grant any thing *de Novo*, but that thereby our antient Laws and Liberties, were only repeated and confirmed, and indeed all thoſe our Anceſtors maintai ed, not only with indefatigable prudential care and induſtry, but with the vaſt expence of Blood and Treaſure, witneſs the more then twenty years inteſtine Bloody Civil War, in the Reign of King *John*, and in the end, the confirmation of thoſe Laws, and Liberties (by the ſame King) in the face of the Nobility, and other the great Men of the Kingdome, and of an infinite multitude of other the free people of *England*, as ſaith *Brittaine*, *fol.* 219. So that there wants nothing to make it fully demonſtrable, that by our Anceſtors magnanimity, and reſolved courage, (in maintaining the antient Common Law) they and their Poſterity were not only eſtabliſht in their juſt Rights, but were preſerved from ſuch Impriſonment for Debt or Damages (or any thing thereunto relating) two hundred and fourteen years after the Norman Conqueſt, which now is inflicted, upon many thouſands of His Majeſties Good, Loyal, and Faithful Subjects, to the utter ruine of them, their Families, and Relations, whilſt thoſe (who have lined their Iron Conſciences, with nothing but their profit, and their Cheſts throughout, with the Wealth of the Kingdome, (which they have gotten by the late unhappy differences and troubles) ſmile to ſee thoſe, who have ſacrificed their Bloods, nay themſelves, and theirs, n and to His Majeſties faithful Services) [illegible] up (by many of hem) in diſconſolate and loathſome Priſons, and thereby made ıſeleſs nothings, to the World and themſelves. Whereas, if we caſt our eyes back, into the Reigns of the Saxon Kings, we ſhall ind, that (thoſe Martial, Wiſe, and Wary Princes) King *Ina*, King *Ecbelſton*, and after them, all the Saxon Kings, (according to the anciıt Britiſh Laws) were ſo very tender of the Impriſonment of Mens erſons, that they did not puniſh their very Bond-Men with it. And King *Alfrede*, diſplaced and Impriſoned one of his Judges, for daring o to do, and (when the Government devolved, and came to the *Norıans*) *William* the Conqueror, *William Rufus*, and *Henry* the Firſt, took ich exact care to preſerve this liberty, un-infringed, that (in their eigns) not any perſon was Impriſoned, (although for mortal crime

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it ſelf) unleſs he were firſt attainted, upon the Verdict of twelve Men. And (additional to all this) many ages after the Conqueſt (by the ancient Common Law) the Writ *de Odio & Atia*, was given to a Man that was Impriſoned, although for an hainous Crime, (for the death, of a Man) yet the Law (in that golden age) in favor, and out of an high eſteem it had of the Liberty of a Man, and that his Body ſhould not be detained in Priſon, until the Juſtices in Eyre ſhould come) he might ſue out this Writ, directed to the Sheriff; and although the offence (for which he was committed) was not baylable by Law) yet the ancient Common Law, did ſo highly hate and abominate, the long Impriſonments of Men, that it gave him this Writ for his relief, which appears by *Bracton*, in his third Book, *fol.* 121. and by *Fleta*, in his firſt Book, *Chap.* 14. And with whom alſo *Glanvell* agreeth, in his forteenth Book, *Chap.* 3. And the *Myrror of Juſtice* (a Book of great Antiquity and Eſtimation in the Law, as well as the Books before cited) *Chap.* 5. *Sect.* 1. complains of the Impriſonment of Mens Perſons, as an abuſe, although it had been for breaking of a Goal. Now, for that it is clear as the light, how highly valuable, and dearly precious, the Liberties of Mens perſons were (by the Common Law of the Land) it is (in moſt humble and ſubmiſſive manner) propoſed, that (as well for the general good of all His Majeſties Subjects, as for Priſoners) the antient Common Law may be reſtored, and that great Liberty of the Freedome of all the Subjects of *England* and *Wales*, from Impriſonment (for Debt or Damages) may (by the Grace and Favor of His Majeſty, and of both His Honorable Houſes of Parliament) be again retreived, and brought back with Honor, to the people of this Kingdome; and that the ancient forms and ways for recovery of Debts, may be (as for ſeveral hundred of years it was) by Original Writ, *diſtreſs infinite*, *Fieri facias*, and *Levari facias*; and as (by the ancient Common Law) it continued (with great and happy peace and tranquillity) for ſuch great length of time as aforeſaid. And certainly great reaſon it is, that it ſhould be ſo, all Debts and Damages being to be properly had out of the Eſtate of the Debtor, and not his Perſon. It is ſaid, by the Lord Chief Juſtice *Coke*, in his third Report, *fol.* 11, 12. that the Common Law hath, and had its foundation laid and built, upon the true grounds of Reaſon, and that being granted, (as of neceſſity it muſt) then it will conſequentially follow, that it were an Act of as much Honor, as Juſtice, to reſtore to the people of *England*, the poſſeſſion of the Inheritance and birth rights, which they all have in, and to

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the ancient Common Laws of *England*, and of which they have ſo long and unhappily been diſeiſed, who indeed have too long already groaned under the very miſerable alteration thereof, by ſuch the Impriſonment of Men as aforeſaid. And indeed, the very large, vaſt, and ſufficiently known great Prudence, truly wiſe Apprehenſions, and Princely compaſſion of His late Majeſty, (of ever precious and glorious memory (now in Heaven) towards his Subjects) were ſuch, that it is eminently known, (that had not the unhappy eruption, of the late Civil War, prevented it) the bent of his full reſolutions were, to have intimated his recommends to the Parliament, for the diſcharge of all Priſoners for Debt or Damages, and the abſolute taking away of all Arreſts and Outlawries, upon ſome reaſonable compenſation, to be made for the emoluments that thereby came to his Crown, which was then hoped would have gone under no great difficulty, to have been done, and is now (with as great facility and eaſe, (as is conceived) by the Wiſdome of the Parliament) to receive a full and perfect conſummation; and as his ſaid late Royal Majeſty was pleaſed to ſay, (in the Court of the Higheſt Injuſtice, the Chriſtian World ever knew) that he thought he underſtood the Laws of *England*, as well as any Gentleman of his Kingdome, (whoſe profeſſion it was not) ſo (by this intentional Act of his (had it ſucceeded) he had made it fully and clearly evident, to all his people, that (by reſtoring the antient known Law of the Land herein) to its priſtine and original juſt ſtrength, and vertue) he would thereby, as well have compelled their ignorance to underſtand, with how great and profound knowledge, (in the very antient Laws of the Kingdome, as the more modern) he was largely and plentifully furniſht, as by his un-enthrawling, new and freſh enfranchiſing his Subjects herein, and by calling them, (and his and their ancient Laws) out of the dark Caves and Dens of Priſons, (where for ſo great length of time) they had lain Sepulchred together. And truly it is a Soliciſme, that may be juſtly thought on, that the Law which is ſo kind and merciful to my Horſe, as to take proviſional care for a Replevin to inlarge him, , and yet that I my ſelf, ſhould be reteined in durance, under a periſhing condition, nay and without as much as any difinitive time (by Law) ſet for my releaſement, and for years, that may tell ſteps, to the laſt ſtand of my life, there to melt and burn out my time, by a kind of every days death. And I can (in no ſort) doubt, but that Wiſe and Prudent Men, will ſeriouſly, and deliberately perpend and conſider (as elſewhere I have ſaid) that this is the caſe of almoſt every Engliſh Subject, for (let him be crammed with never

never ſo much Wealth, (yet he knows not, (nor is it poſſible for him to know or foreſee) how ſoon he may be in a Priſon himſelf, or if not himſelf, yet his Widdow, Child, or Children, near and dear Relations, Kinred, or intimate Friends. And notwithſtanding all this, if it ſhall be thought too great a boone, that all Impriſonments for Debt or Damages, ſhould (now and for ever hereafter) be taken totally away, and the bleſſed antient Laws of *England*, be thereby fully and happily reſtored, to all perſons in general (as is hoped and deſired it may be) it is then humbly recommended, to a ſerious and deliberate digeſtion that (taking into due conſideration, the late direful miſeries, which (like raging and tempeſtuous Waves) have (one in the neck of another) rowl'd in upon thoſe that are now in Priſon, and their Eſtates, by the ſeveral great and calamitous Judgments of the late Civil War, Plague, Fire, and Dutch War) if it may not come within a juſt and conſcientious commiſeration, to free and diſcharge all ſuch as are now Priſoners, in the ſeveral Priſons of *England* and *Wales*, from their Impriſonments; and yet notwithſtanding (ſuch their diſcharge) that their Creditors may have their juſt and antient Remedies, ſuch as by the antient Common Law, they might have had, for recovery of their Debts, out of ſuch Priſoners real and perſonal Eſtates, by ſuch way and means, as the ſame antient Law preſcribes, and as (herein before is ſet forth and declared; which moſt modeſt Propoſal, being only on the behalf of ſuch, as are now Priſoners; and being not propoſed as a ſtanding Act to continue, and diſcharge Priſoners in future) is hoped, will find a gentle and ſmooth paſſage, to its deſired end. But if this muſt be alſo thought an Act of Grace, too large, yet certainly it cannot be apprehended, leſs than a perfectly honeſt, and truly conſcientious offer (in lieu of their being diſchardged from their Impriſonments) to be ready and willing to part with all their Eſtates, both real and perſonal, for the ſatisfaction of all their Creditors; and not only to ſubmit themſelves, but any Witneſs or Witneſſes, to be examined upon Oath, for the true diſcovery thereof, and that (for ſuch only) as are now Priſoners, and no other as aforeſaid, which if it be not) an equal, purely fair, and juſt propoſal) I leave any impartial and unbyaſt perſon to judge. For the perfecting of which, a Bill, preparatory to an Act of Parliament is drawn, and humbly deſired (by many thouſands of Priſoners that the ſame may paſs, or ſome ſuch other, (for their Relief and Releaſement, as to the Wiſdome of the Parliament, ſhall ſeem more appoſite and convenient. And if the meaneſt ſort of Priſoners, (that could not pay any thing at all, towards the ſatisfaction

of their Creditors (did by Vertue of the ten pound Act) come ſo far under the juſt and merciful conſideration of the Parliament, as to be freed from their Impriſonments) certainly ſuch Priſoners as can pay ſome part of their Debts, and are ready and willing, to part with all their Eſtates, both Real and Perſonal, that ſo a proportionable Divident may be made thereof, to and amongſt all their Creditors) do hope they may (with much more reaſon) have leave to think themſelves, as well obliged to believe, as to deſire) that they may (by His Majeſty, and both His Houſes of Parliament) be freed from their Impriſonments, before the remainder of their Eſtates be totally ſwallowed up, by the Fees, and other the inevitable great charges of a Priſon, and they thereby be put into the ſame low and deplorable condition, together with thoſe who took the benefit of that Act; by means of which, their Creditors will inevitably looſe their Debts, and ſuch Priſoner, and his, be reduced to extremity of want, and the Kingdome unfurniſht and deprived of very many perſons, whoſe endowments are ſublim'd, and heightned with ſo great natural and acquired parts, as may ſpeak them as advantageouſly uſeful to their King and Countrey, as any other of their fellow Subjects, (very few excepted) many of whoſe liberal and ingenious uſeful Excellencies, deſerve much rather to be cheriſht and encouraged, then depreſt; And ſhall our great and gracious Monarch, and his greateſt Council, think it too much, that (after all the before mentioned Judgments, which have been ſo iterated, and repeated upon ſuch Priſoners, and which have merged and ſunk their (ſometime flouriſhing Eſtates) that they ſhould (now at length) be diſcharged from their Impriſonments, but that they ſhould for ever remain ſo buried, without a reſurrection, from the Dead, Death, and Grave, they are in, and under, whilſt their depreſt parts, are even ſtarved and ſtifled in a Priſon, and yet (in the condition they now ſtand) are left fit only to have the remainder of what is theirs, pluckt and rent from them, and not in the leaſt capacity to help themſelves nor their Creditors? and all this, not only to ſatisfie the appetites of their obſtinately reſolved Creditors, whoſe Money ſuch Priſoners (out of pure neceſſity) are compelled to ſpend, but to ſuffer under, be wyre-drawn, ſqueezed, and run down, by the ſubtilties and variety of Frauds, even of ſuch who have been intimately, and beneficially acquainted with their often repeated kindneſſes, in the light and ſhine of their proſperities; and truly, ſince thouſands of known great, and grievous Offenders, (by His Majeſty, and His happy Parliaments Mercy, made a large and plentiful Meal, on the Viands

of

of His and their gracious compaſſion, whoſe Carcaſes otherwiſe, muſt (by the known rule of Juſtice) have fed the Fire and Birds of prey) it goes under, not only more than probable hopes, but a becoming confidence, That all His Majeſties good Subjects, that are now in durance, in any Priſon of *England* and *Wales*, for Debt or Damages, or any thing thereunto relating, or at leaſt all ſuch as will, ſo as aforeſaid, part with all their Eſtates, both real and perſonal, for the ſatisfaction of their Creditors, and ſuch as are ſo in Priſon, and have not Eſtates of the value of ten pounds) may be participants of His Majeſties, and His Parliaments gracious and ſerene compaſſion, according to the ſaid Bill ſo drawn as aforeſaid, for that purpoſe, or by ſuch other Act, Way, or Means, as may beſt ſute and agree with their great Wiſdomes, which is, by very great numbers of Priſoners for Debt (now faſtned up to the ſeveral Priſons of *England*, in diminution, leſſening, and even degrading of the Antient, Famous, and Renowned Laws thereof) with all Humility, Duty, and Obedience, not only Recommended, and Preſented, but (at their feet) moſt humbly ſubmitted, proſtrated, and laid down,

And with the ſame moſt Humble and Dutiful Obedience,

of a truly Loyal and Faithful Subject

WILLIAM COLE.

A SUMMARY or COMPENDIUM OF The ACT before-mentioned, FOR PRISONERS That will part with all their ESTATES, both Real and Personal, for the Satisfaction of their CREDITORS.

THat it may be lawful for the Lord Chancellor, or Lord Keeper for the time being (upon Requeſt to him by ſuch Priſoner to be made) to iſſue out Commiſſions, to be directed to ſuch Perſons as ſhall be thought fit, authorizing them, (or any three or more of them) in their reſpective Counties) to Summon and ſend for the Creditors of all ſuch perſon and perſons, as now is, or are in priſon (or at any time during this Seſſion of Parliament) ſhall be in Priſon in any of the Priſons in *England*, and *Wales*, upon any Action or Actions upon Meaſne Proceſs for Debt, Accounts or Treſpaſs; which actions by a proſecution of Law, may come to be Judgements for Debts or Damages; or that have Judgements entered of Record againſt them, or charged in Execution, or impriſoned upon Attachments for Debts or upon Outlawries, before or after Judgements for Debt; or upon Statutes, Recognizances, Extents, or upon any other Action, or any other Proceſs whatſoever, iſſuing out of any Court of Law, or Equity, for the cauſe of Debt or Damages, or Coſts, or for Money ordered or decreed in any Court of Equity, at the ſuit of any perſon or perſons whatſoever, or upon, or by reaſon of any Proceſs iſſuing upon them, any or either of them reſpectively; as well thoſe perſons, for whoſe Debt and Debts the ſaid Priſoner and Priſoners is, and are impriſoned; as all other perſon and perſons, to whom ſuch Priſoner and Priſoners is, or ſtands indebted: As alſo to ſend for ſuch Priſoner or Priſoners, by Summons, to come before them; which Summons the Priſon-Keepers are to obey, upon the penalty of 100 l. And (at the ſame time) to certify the Cauſe and Cauſes of ſuch Priſoners impriſonment. And the Commiſſioners (after the examination of ſuch Priſoner) are to Remand him to Priſon.

That

That if such Creditor be dead, an Infant, or of Non-sane memory, then to summon the Executors, Administrators, or Guardian of such Creditor; Requiring also such Prisoner-keeper, to bring such Prisoner to such place as the Commissioners shall appoint, where the said Commissioners shal Treat with such Creditors, touching their Debts; that so a proportionable distribution may be to them made, of the said Prisoners Estate (the Apparell of such Prisoner, and also necessaries for his Trade excepted out of his personal Estate.)

That if any of the Creditors shall refuse or neglect to come before the said Commissioners (or some for them,) having had twenty days notice inclusive and Oath made thereof) the said Commissioners to be impowered to finish such allotment, such Creditors absence notwithstanding.

That the said Commissioners be impowered to examine the said Prisoner upon Oath, for the discovery of his Estate, and to send for such Books, Evidences, and Writings, as they think fit, and to examine Witnesses upon Oath, to the end, that they may make a true discovery of the Prisoners Estate, which is so to be done, within six Kalender months after their first sitting, or sooner if it may be.

That the said Commissioners be authorized to apportion all such Estate amongst the Creditors proportionably, by sale of the Estate, or otherwise; which sale, or other disposition shall be good against the Prisoner's Heirs, Executors, *&c.* and to be divided within three months after the end of the said six months (or sooner if it can be done) And that the said Commissioners be impowered to assign the Debts and Estate of such Prisoner to such Persons as they shall think fit, for the use of the Creditors, a twentieth part (so to be sold) to be allotted to the Prisoner, for present maintainance, and for some small foundation for future living.

That Mortgages shall be first payed by the Estate so Mortgaged.

That (after the apportioning of such Prisoners Estate) the Prisoner shall be discharged; and that such part of the Prisoners Estate as shall be allotted to the Creditors shall be in full satisfaction of such Creditors Debt.

That such Creditors as shall not appear before the said Commissioners (or some for them) before such Divident be made (having had such notice as aforesaid, and Oath made thereof) shall be utterly, and for ever, precluded from the recovering of his said Debt, against the said Prisoner his Executors, *&c.*

That a Writing under the Hands and Seals of the Commissioners (expressing the discharge of such Prisoner) shall be a full Discharge to him against his Creditors, and another Writing, (signifying such Prisoners Discharge) directed to the Prisoner-keeper shall be a sufficient Warrant for him to discharge such Prisoner; which he is to do within two days, without payment of any Fees; but the Prisoners Chamber-rent is to be paid out of the Estate so to be sold, or so much thereof as the Commissioners shall think fit.

That if any Action of Escape shall be brought against the Prison-keeper (for the discharging of such Prisoner) he may plead the general Issue, and give this Act in Evidence; and if the Plaintiff shall be Non-suted, or a Verdict shall pass against him, he is to pay the Defendant double Costs to be Taxed by the Court, where the Action shall be brought.

That for the expediting the sale, and other the disposition of such Prisoners Estate (in order to the satisfaction of his Creditors) without whose personal aid and assistance, it will be of far the greater difficulty for the Commissioners to expedite and execute the same) it be lawful for the Lord Chancellor or Lord Keeper (for the time being) from, and immediately after the remanding of such Prisoner to Prison by the said Commissioners) to grant unto such Prisoner a *Habeas Corpus*, or *Habeas Corpus*'s for such length of time, as he shall think necessary and conveneint in that behalf; to the end that such

Prisoner

Priſoner may be in a condition perſonally to attend the ſaid Commiſſioners; and to be otherwiſe inſtrumental in giving of a ſpeedy diſpatch to the Sale, and Diſpoſal of his Eſtate, as aforeſaid.

Provided, That if any Priſoner ſhall ſet forth to the ſaid Commiſſioners, or to any three, or more of them, as aforeſaid, the Debt of any Creditor of his that is beyond the Seas, to be leſs than in truth the ſame is, ſuch Priſoner ſhall thereby forfeit and loſe the benefit of this Act, (as to ſuch Creditor, and every ſuch Creditor, his Executors, Adminiſtrators and Aſſigns, making his Debt to appear to be more than ſuch Priſoner ſhall have declared the ſame to be before the ſaid Commiſſioners, ſuch Creditor is hereby impowred and authorized again to proceed and take the ſaid Priſoner in Execution, and thereupon to impriſon him, or otherwiſe to proſecute him at Law, or in Equity, as to him ſhall ſeem beſt; or to indict and proſecute him at the Common Law, for breach of his Oath, or upon any Statute or Statutes made againſt Perjury: This Act, or any thing herein contained to the contrary thereof in any-wiſe notwithſtanding.

Objection.

To theſe Heads of a Bill, perhaps there may be ſeveral Objections: As firſt, That (in what is here propoſed for a Bill) there is no proviſion, that (in caſe the Priſoner happen to have an Eſtate after he is diſcharged) that ſuch Eſtate ſhall be Subject to his Debts.

Anſwer.

To which is anſwered, That the Priſoner (parting with all his Eſtate voluntarily, it will ſeem very ſevere, that he ſhould not be capable of a Legacy, or other Gift from any Friend and Relation, but that it muſt (of neceſſity be (upon the matter) deviſed or given to his Cerditors. Or that he, (who by remaining in priſon could never (in the leaſt) have advantaged his Creditors, yet (being diſcharged and at liberty) all his labours ſhould be expoſed to his Creditors mercy.

Objection.

Secondly, (And which is a very great objection) That by the heads of this Bill (although Mortgages are to be paid firſt) yet Judgements, Statutes, and Recognizances are thereby but in the ſame degree with Bonds, and to be paid equally, although the Law gives them a priority in payment.

Anſwer.

To which it is anſwered, That (in this caſe) if a Judgement, Statute or Recognizance, ſhould (according to the rule of Law) be paid before Bonds, then (as this Caſe is) there cannot be (as it may fall out) a proportionable Divident of the Eſtate, nor indeed any Divident at all; for one Judgement, Statute or Recognizance may ſwallow up the whole Eſtate; beſides, it is plain, that (by the Statute made againſt Bankrupts) Judgements, Statutes, and Recognizances, are equally, and proportionably paid with Bonds, and no otherwiſe; ſo that (in that caſe) they are (*in parigradu*) with Bonds and other Debts; and may much rather ſo be in this caſe than in the Statute of Banckrupt, eſpecially conſidering, that this is not a ſtanding Act, but for the diſcharge of ſuch only, as are now in Priſon, begotten out of the ſeveral fatal accidents which have happened in this age more than in any former; by means whereof, many thouſands (more then formerly) are now claſp'd, and ſhut up in priſons.

Thirdly

Objection.

Thirdly, That the Proviſo, that the Priſoners ſhall have a twentieth part of his Eſtate, for his preſent maintainance, may ſeem unequal, in regard (as hath been urged) That then a Tradeſman (or any other in credit) may get twenty thouſand pounds into his hands, and then go into a Priſon, and be ſure of One thouſand pounds. Next, That (in regard his whole Eſtate will not pay his debts, without abatement) it is not reaſonable that he ſhould have a twentieth part.

Anſwer.

To which it is anſwered, That if there ſhall be any one ſuch perſon as would, or could deſignedly, (to gain 1000 l.) get twenty thouſand pounds into his hands, the which (upon a due and deliberate conſideration of the thing) is not eaſily to be imagined, ever will or can be done) yet the villany of one Man (it is hoped) ſhall not be put into the Ballance, with the good of many hundreds. Next (it's true) it may ſeem hard that the Priſoner ſhould have any thing out of his Eſtate, when all will not pay his debts; and it is equally as hard, and harder, that (after he hath ſpontaneouſly deveſted himſelf of his Eſtate) he ſhould be turned naked into the World, without any thing at all to give him a preſent ſupport, or ſome ſmall foundation for future living.

That if due conſideration be had of this intended Act or (if not of this) if care be taken for paſſing ſuch another Act, as may effectually operate to the ſame purpoſe, it will be found to be a great good, and weighty work, although ſome perſons (of whom better things might juſtly be expected) little regard or conſider it; for it is of ſuch conſequence, to relieve the oppreſſed, to ſtudy, and effect ſuch works of Piety and Charity, as concerns all the Priſoners and Priſons of *England* and *Wales*, that it will (as is hoped) deſerve ſome of the *oleum & opera*, of every good Patriot that loves his Countrey to whom it is ſeriouſly recommended, by this (or ſome ſuch other Act) to perfect a work (although with difficulty and pains) ſo incumbent upon all perſons of ſpacious and publick Souls; eſpecialy weighing, that not any former age hath left a trace, or memory, ſuitable to the great variety of ſufferings as in this.

FINIS.

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